Supreme Court, U.S.
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No. 93-1851

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

KEITH DURR and D. ALAN HARRIS,
Petitioners,

v.

INTERCOUNTY TITLE COMPANY OF ILLINOIS, an Illinois Corporation,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether allegations of overcharges, comprised of a disclosed $3.00 service and handling fee and a $4.50 clerical error, made by Respondent title insurance company to Petitioner Keith Durr, a purchaser of residential real property, provided a sufficient basis for a federal claim pursuant to Section 2607(b) of the Real Estate Settlement Procedure Act, 12 U.S.C. §2607(b), in the absence of any allegation of a kickback, referral, fee-splitting or other such arrangement between Respondent and any third party.

Whether the United States District Court judge abused his discretion in awarding sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure against Petitioner D. Alan Harris, an attorney, after Mr. Harris persisted, despite repeated judicial admonitions, in asserting a claim for damages which clearly contradicted the measure of damages plainly set forth in Section 2607(d) of the Real Estate Settlement Procedure Act, 12 U.S.C. §2707(d).

Whether a statement in the Seventh Circuit's opinion that the District Court "did not abuse its discretion by imposing sanctions for [Petitioner] Harris' assertion that a class existed, when none really did" was necessary to the Seventh Circuit's decision upholding the District Court's award of sanctions against Mr. Harris where (a) the Seventh Circuit held that the District Court had not abused its discretion in sanctioning Mr. Harris for his excessive damage claim and (b) Mr. Harris did not challenge the amount or scope of the sanctions awarded against him by the District Court.

RULE 29.1 LISTING

The Respondent, Intercounty Title Company of Illinois, has no parent company and no nonwholly owned subsidiary other than Landata, Inc. of Illinois, an Illinois corporation.

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Intercounty Title Company of Illinois respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Seventh Circuit's opinion in this case. That opinion is reported at 14 F.3d 1183 (1994).

STATUTES INVOLVED

§2607. Prohibition against kickbacks and unearned fees

(a) Business referrals

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) Splitting charges

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Fees, salaries, compensation, or other payments

Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, (4) controlled business arrangements so long as (A) at or prior to the time of the referral a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with the referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred, except that where a lender makes the

referral, this requirement may be satisfied as part of and at the time that the estimates of settlement charges required under section 2604(c) of this title are provided, (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or (5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture. For purposes of the preceding sentence, the following shall not be considered a violation of clause (4)(B): (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(d) Penalties for violations; joint and several liability; treble damages; actions for injunction by Secretary and by State officials; costs and attorney fees; construction of State laws

(1) Any person or persons who violate the provisions of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(2) Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal

to three times the amount of any charge paid for such settlement service.

(3) No person or persons shall be liable for a violation of the provisions of subsection (c)(4)(A) of this section if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Secretary, the Attorney General of any State, or the insurance commissioner of any State may bring an action to enjoin violations of this section.

(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees.

(6) No provision of State law or regulation that imposes more stringent limitations on controlled business arrangements shall be construed as being inconsistent with this section.

§2608. Title companies; liability of seller

(a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) of this section shall be liable to the buyer in an amount equal to three times all charges made for such title insurance.

STATEMENT OF THE CASE

On August 21, 1992, Petitioner Keith Durr ("Durr") purchased residential real property in Indian Head Park, Illinois. In connection with Durr's home purchase, the Respondent, Intercounty Title Company of Illinois ("Intercounty"), provided a number of services including the title search, title certificates, title insurance, preparation of documents, settlement and disbursement of funds, and the handling of the paperwork. Intercounty also was responsible for transporting Durr's deed, mortgage and filing fee to the Cook County Recorder of Deeds. There is no dispute that all of these services were properly performed by Intercounty.

On or about July 7, 1992, a month and a half before the closing, Intercounty sent Durr a title commitment on the cover of which was an invoice setting forth Intercounty's anticipated charges for the title insurance policies and the endorsements thereto, and for the recording of Durr's deed and mortgage. Specifically, the invoice set forth a $25.00 anticipated charge for "Recording Deed" and a $37.00 anticipated charge for "Recording Mortgage," and clearly stated that

> We have included a one dollar and fifty cent service and handling fee in the charges for any instruments recorded.

At the real estate closing on August 21, 1992, Intercounty charged Durr $25.00 to record his deed and $37.00 to record his mortgage. Subsequent to the closing, Intercounty transmitted the deed and mortgage to the Cook County Recorder of Deeds for recording. After the deed and mortgage were recorded, file-stamped copies of these documents were returned by the Recorder of Deeds to Durr's real estate attorney, who noticed a discrepancy

between the filing fees collected by the Recorder of Deeds and Intercounty's charges for "Recording Deed" and "Recording Mortgage".

Rather than telephoning or writing to Intercounty to inquire about the discrepancy, Durr's litigation counsel, Petitioner D. Alan Harris ("Harris"), decided to file a "Class Action Complaint" in the United States District Court for the Northern District of Illinois on November 5, 1992. The Class Action Complaint, as amended, claimed that Intercounty had charged Durr $7.50 more for the recording of Durr's deed and mortgage than the actual recording fee collected by the Recorder of Deeds. Despite the small sum involved, Durr's prayer for relief requested judgment in the amount of three times *all* monies paid to Intercounty by Durr and other members of the purported class (buyers and sellers of real estate) for *every* service provided by Intercounty in connection with residential real estate transactions. The damages sought specifically "includ[ed] without limitation" treble the full amount of "the Recording Fees (for Mr. Durr, $62.00); the Closing Fees (for Mr. Durr, $155.00) and the Title Insurance (for Mr. Durr, $170.00). Thus, the total trebled amount sought by Harris on Durr's behalf was $1,161 (*i.e.*, $387 times three).

The "overcharge" alleged by Durr's Complaint consisted of two categories of charges. First, Intercounty charged a $1.50 service and handling fee per recorded instrument (a total of $3.00 for both the deed and mortgage) as it expressly said it would on its July 7, 1992 invoice. Second, Intercounty mistakenly charged Durr an additional $4.50 because Intercounty's closing agent failed to observe (1) that Durr's real estate attorney kept a lock box at the Recorder of Deeds office (saving the Recorder of Deeds' 50¢ mailing charge) and (2) that Durr's mortgage

was on paper that was longer than normal (reducing the Recorder of Deeds' filing fee for two pages at $2.00 per page).

Upon review of Durr's Class Action Complaint, the District Court *sua sponte* issued a Memorandum Opinion and Order, dated November 13, 1992, which advised that

> Even if Durr's allegations are to be accepted (as this Court is bound to do in evaluating his Complaint), Durr's damages for the violation would appear to be three times the $8 overcharge or $24, rather than three times what Intercounty charged for *all* its settlement services as prayed for in Durr's Complaint (Durr was charged $62 for the recording fees referred to earlier, plus $155 for closing fees (which he does not challenge as a RESPA violation), and plus $170 for title insurance (also an unchallenged item)).

On November 23, 1993, Harris filed a "Response to Order of November 13, 1992" raising a number of specious arguments in support of Durr's damage claims.

On December 1, 1992, the District Court issued a second Memorandum Opinion and Order which noted, in view of the Response to Order of November 13, 1993, that

> Durr's counsel somehow persists in the claim that the recoverable treble damages under RESPA are to be measured by three times Intercounty's *total* settlement services, even though the $155 that it charged for closing fees and the $170 that it charged for title insurance were unquestionably disclosed to and unchallenged by Durr.
>
> In that respect the memorandum seeks to justify Durr's excessive claims by cloaking it in the knightly mantle of consumer protection. . . . When all the underbrush is cleared away, the arguments that Durr's counsel advances in the memorandum are entirely bogus in terms of both the RESPA statutory

> language *and* its purpose. *At most* the undisclosed settlement costs suffered by Durr would amount to $7.50, which trebled would come to $22.50.

Intercounty subsequently filed an Answer and Affirmative Defenses, a Motion to Strike, and a Motion to Dismiss. Intercounty's Motion to Strike asked the District Court to strike the claims of the first paragraph of Durr's prayer for relief for damages in excess of the overcharges claimed in his Complaint. Intercounty's Motion to Dismiss argued that Durr had failed to set forth a federal question cause of action because Durr's allegations were not actionable under RESPA.

Durr's counsel, Harris, asked the District Court for permission to file yet another brief on the matter. When Harris submitted that additional brief, however, it added virtually nothing to the response brief he had filed two months earlier.

On February 3, 1993, Intercounty filed a Motion for Sanctions on a number of grounds including the "inflated damages claims" advanced by Harris, Harris's refusal to modify his claims in the slightest, and Harris's "persistence in making [his] arguments in the face of [the District] Court's two Memorandum Opinions and the [District] Court's admonitions at the January 6 status hearing."

In a Memorandum Opinion and Order dated February 5, 1993, the District Court granted both Intercounty's Motion to Strike and Intercounty's Motion to Dismiss. The District Court noted that Harris had done "nothing to cure [the] patent defect" in his damages claims. The District Court then ruled as follows:

> Accordingly, the Complaint's prayer for relief must be stricken. And Harris' greed and obduracy must have their price. Unless Harris can offer up some

> better showing of the objective good faith that is demanded by Fed. R. Civ. P. ("Rule") 11 than he has done up to now, he will be subject to an "appropriate sanction" as mandated by that rule. And unless Harris can indicate why, given his persistence in the face of this Court's repeated importunings, the appropriate sanction should not entail his making Intercounty whole for the attorneys' fees and expenses incurred in dealing with that issue, that will be the price he must pay for advancing and sticking to his legally frivolous claim.

On March 18, 1993, the District Court issued a Memorandum Order stating that "it was an egregious violation to embroil Intercounty in this litigation," holding that "Intercounty is entitled to recover its fees and out-of-pocket expenses under Rule 11." At the final hearing before the District Court on May 12, 1993, the District Court ordered Harris to pay sanctions pursuant to Fed. R. Civ. P. 11 in the amount of $8,000.00.

In two separate appeals, Durr and Harris sought the Seventh Circuit's review of the District Court's decisions (1) granting Intercounty's Motion to Dismiss and (2) awarding sanctions to Intercounty. The Seventh Circuit's opinion, decided January 20, 1994, affirmed both decisions, concluding that

> Harris made a federal case out of an $8.00 overcharge for title and mortgage recording services, alleging violation of RESPA. The district court properly dismissed the complaint. The district court also did not abuse its discretion in imposing Rule 11 sanctions against Harris for his excessive damage claim, and for his unsupported allegation that there was a class of injured plaintiffs deserving of recovery.

REASONS FOR DENYING THE WRIT

I.

THE SEVENTH CIRCUIT'S DECISION BELOW SIMPLY APPLIED THE PLAIN LANGUAGE OF THE RESPA STATUTE TO THE FACTS OF THIS CASE

The Seventh Circuit's decision in this case is entirely consistent with the plain language of the statute itself, its legislative history and every reported case on the meaning and scope of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §2601-2617. This case concerns a clerical error. There are no allegations whatsoever of any improper payment to, or "split" with, any third party. As such, the allegations of the Complaint simply do not fall within the ambit of RESPA, and had no business being raised.

RESPA §2614 provides that "[a]ny action pursuant to the provisions of section 2607 or 2608 of this title may be brought in the United States district court. . . ." RESPA thus provides a private right of action in only two limited circumstances: kickback schemes under RESPA §2607 and directed business schemes under RESPA §2608. According to the allegations of the Complaint itself, this case is neither.

RESPA §2607 provides, in pertinent part, as follows:

> **§2607. Prohibition against kickbacks and unearned fees**
>
> **(b) Splitting charges**
>
> No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

RESPA §2607(b) was intended by Congress

> to prohibit all kickback and referral fee *arrangements* whereby any payment is made or "thing of value" furnished for the referral of real estate settlement business. The section also prohibits a person that renders a settlement service from giving or rebating any portion of the charge *to any other person* except in return for services actually performed.

Mercado v. Calumet Fed. Sav. & Loan Ass'n, 763 F.2d 269, 270-71 (7th Cir. 1985), citing S. Rep. 93-866, 93d Cong., 2d Sess. (1974) reprinted at 1974 U.S. Code Cong. & Admin. News 6551 (emphasis added). The Seventh Circuit has acknowledged, both in this case and in prior cases, that RESPA is a broad statute. Nevertheless, RESPA §2607(b) was directed by Congress "against a particular kind of abuse that it believed interfered with the operation of free markets—the splitting and kicking back of fees to parties who did nothing in return for the portions they received." *Mercado*, 763 F.2d at 271. It is "an anti-kickback statute [which] requires at least two parties to share fees." *Id.* at 270. Indeed, the language of Section 2607(b) itself clearly speaks in terms of "giving and accepting" a "portion, split or percentage."

Durr's allegations against Intercounty did not state a claim under RESPA §2607(b) and therefore did not set forth any basis for federal subject matter jurisdiction. Durr's Complaint alleged no involvement by any person other than Intercounty in any type of kickback, referral, or fee splitting arrangement. Rather, the Complaint alleged simply that Intercounty charged too much for settlement services which were supposed to be performed, i.e., the recording of the Durr's deed and mortgage. Unfortunately for Durr, however, RESPA simply "does not encompass the charging of excessive fees, or fees for ser-

vices that are supposed to be but are not actually performed," *Adamson v. Alliance Mortgage Co.*, 677 F. Supp. 871, 871-72 (E.D. Va. 1987), *aff'd*, 861 F.2d 63 (4th Cir. 1988), and every court which has reviewed the issue has reached that same conclusion based upon the plain language of the statute itself. *See, e.g., Mercado v. Calumet Sav. & Loan Ass'n*, 763 F.2d 269, 271 (7th Cir. 1985) (no RESPA violation because mortgagee bank's error did "not create the 'other person' and the 'portion, split, or percentage' of which the statute speaks"; *Duggan v. Independent Mortgage Corp.*, 670 F. Supp. 652 (E.D. Va. 1987) (no violation of RESPA §2607(b) absent an allegation of the presence of a third party); *Eisenberg v. Comfed Mortgage Co.*, 629 F. Supp. 1157, 1159 (D. Mass. 1986) (no RESPA violation where the defendant mortgage company received no fee in return for a referral of business).

The allegations in this case are that Intercounty charged Durr more than Intercounty's out-of-pocket costs to record the Appellant's deed and mortgage. No third party is claimed to have accepted any payment for a service not performed. Durr's allegations that Intercounty overcharged him and retained the extra fees for itself clearly do not amount to a federal cause of action under RESPA.

Durr has tried to avoid this fatal flaw in his case by quoting, out of context, from the Seventh Circuit's opinions in *United States v. Gannon*, 684 F.2d 433 (7th Cir.), *cert. denied*, 454 U.S. 9401 (1981), and *Mercado v. Calumet Federal Savings & Loan Ass'n*, 763 F.2d 269 (7th Cir. 1985). The *Gannon* case involved an official at the Recorder of Deeds office who was charged with a *criminal* violation of RESPA for accepting bribes, which he demanded if persons seeking the recordation of title documents wanted prompt service. *Gannon*, 684 F.2d at 436. It is clear that there was an improper payment from the

payer of the bribes to the official. It is equally clear that the dispositive facts of the present case bear little relation to the facts of *Gannon*. Further, in *Mercado*, this Court expressly limited *Gannon* to its facts and warned against taking its language out of context in cases where allegations of unduly high fees do not include allegations of an arrangement to give or accept such fees. *Mercado*, 763 F.2d at 271.

Durr also has argued that Intercounty somehow "disguised" its $1.50 per document handling fee as a government charge. Specifically, Durr has suggested that, despite the fact that Intercounty highlighted its $1.50 charge on its invoice, this nominal fee was mislabeled on the RESPA closing statement and somehow induces consumers to use Intercounty's settlement services. At best, such an argument implicates only RESPA §2603 which prescribes the form of the RESPA Closing Statement. Yet, RESPA §2614 specifically authorizes private causes of action in federal court only for violations of RESPA §§ 2607 or 2608, and specifically excludes private causes of action premised upon RESPA §2603.

In addition, RESPA §2607(c) expressly exempts from the coverage of §2607 the payment of fees "for services actually performed." RESPA §2607(c)(2); *McCarrick v. Polonia Federal Savings & Loan Ass'n*, 502 F. Supp. 654, 657 (E.D. Pa. 1980). It is undisputed here that Intercounty did, in fact, perform a service to Durr by taking his deed and mortgage to the Recorder of Deeds for filing (in addition to providing title insurance and numerous other closing services).

It is therefore quite clear that this case was properly resolved on jurisdictional grounds. For reasons of his own, Harris attempted to turn a slight clerical error into a federal class action when he could simply have telephoned

Intercounty for a $4.50 refund. On its face, RESPA was never meant to confer federal jurisdiction upon every contract or fraud claim, no matter how small, which might arise in connection with the purchase of a home.

II.

THE SEVENTH CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S SANCTIONS AWARD IN VIEW OF RESPONDENT HARRIS' CONDUCT THROUGHOUT THE LITIGATION

Respondents challenge the Seventh Circuit's decision affirming the District Court's sanction award against Harris on two grounds: (1) no reported case law has construed the damage provision in the RESPA statute upon which Harris based his inflated damages claim and (2) the District Court's sanction award was not based upon a specific holding that no plaintiff class existed. Neither ground has any basis, and neither warrants review by this Court.

A. The Damage Issue

Harris claimed that Intercounty violated RESPA §2607(b) by overcharging Durr solely for the *recording* of his deed and mortgage. RESPA §2607(d) unambiguously sets forth the measure of damages for a violation of §2607(b), stating that a violator shall be

> liable to the person or persons charged for the settlement service [singular] involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

Here, the settlement service "involved in the violation" was Intercounty's transmittal of Durr's deed and mortgage from Intercounty's offices (where the closing took place) to the Recorder of Deed's office (for filing). Even accepting as true Durr's allegations as to the improprie-

ty of Intercounty's charges for this transmittal, RESPA simply cannot be construed to require Intercounty to forfeit three times its fees for the *other* settlement services it rendered: the title search; the provision of a title certificate and title insurance; the preparation, review, and processing of every document involved in Durr's real estate closing; and attendance at and handling of the closing itself.

At the status hearing on January 6, 1993, the District Court stated:

> Now I read the statute [RESPA]. I read it indeed when your claim was first filed. There is no rational way in which the damages can be pegged to items that are not at all the subject of any claimed nondisclosure or any claimed misrepresentation. And that's really what you have sought to do.
>
> I have read it. You know, it's plain. . . . The statute has plain language legislative history.

After providing Harris with ample opportunity to file one brief after another on the propriety of the damages claims he was asserting on behalf of Durr, the District Court finally ruled that Harris's assertion of, and persistence with, his untenable theory of damages warranted monetary sanctions pursuant to Fed.R.Civ. P. 11. While the District Court made clear from the outset its unfavorable impression of the overblown scope of Harris's entire lawsuit, it was Harris's repeated refusal to pare down his prayer for relief which ultimately resulted in the District Court's award of sanctions to Intercounty. The District Court's Memorandum Opinion of February 5, 1993, specifically cites Harris' refusal to cure the patent defect in his damage claim despite repeated written warnings by the District Court. Thus, Harris was not sanctioned merely for his strained and overreaching interpretation of the RESPA

damages provision, but, more particularly, for his repeated persistence with those claims in the fact of numerous warnings from the District Court. Nevertheless, Harris has attempted to persuade this Court that the Seventh Circuit's opinion affirming the District Court's sanctions award under these circumstances somehow created a conflict among the federal circuits. The purported conflict raised by Harris is apparently with opinions from other circuits which state that courts ordinarily do not impose Rule 11 sanctions where counsel raises a plausible legal theory on a point of first impression in a circuit.

Yet, labelling an issue "a matter of first impression" does not, by itself, confer immunity upon an attorney to advance any claim, no matter how absurd, if that claim simply cannot be squared with unambiguous statutory language. The District Court specifically addressed this argument in its memorandum order of March 18, 1993, stating:

> This Court rejects the contention that the Complaint reflected "a plausible view of the law." Where the statutory provision is as plain as this one, the absence of precedent most likely reflects the fact that no one has ever seen fit to advance the argument presented by counsel here, rather than the arguments being supportable on a good faith basis.

This is wholly consistent with precedent in all federal courts.

B. The Class Action Issue

The District Court, in its Memorandum Opinion of March 18, 1993, granted Intercounty's Motion for Sanctions, stating:

> Intercounty has moved for sanctions in this action—an action that was ill-conceived from the outset. . . . It must be concluded that . . . the entire course of the

> litigation was driven by the insupportable insistence of Durr's counsel on damages in an amount that had no relationship at all to the alleged violation by Intercounty. In sum, this is a lawsuit that should never have been brought—given the objective good faith requirement of Fed.R.Civ. P. 11.

As the District Court earlier noted in its February 5, 1993, this litigation resulted entirely from Harris' greed and obduracy, as dollar signs had blinded Harris to any rational reading of RESPA. The deposition of Durr revealed that, although Harris named Durr as his purported class representative, Durr had no interest or stake in the litigation and no understanding of the underlying claims,[1] and had little chance of qualifying as an appropriate class representative if the case had proceeded further.

Harris never challenged the amount of the sanctions awarded against him by the District Court; he simply continued to insist that his was a plausible view of the damages provision in the RESPA statute. The Seventh Circuit clearly held that it was within the District Court's discretion to sanction Harris for persisting with what was, in reality, an entirely implausible view of Durr's potential damages.

That the Seventh Circuit also found Harris' allegations regarding the existence of a large plaintiff class to have been sanctionable by the District Court is immaterial. The Seventh Circuit awarded no sanctions of its own, but merely held that the District Court's sanction award was within the District Court's discretion based upon the damages issue *or* upon the class action issue. In other words,

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[1] Durr apparently had been misled about the case, and believed that the County was paying his litigation expenses. His total assets consisted of $5,000 in cash which he kept in his sister's van.

the damages issue alone was sufficient to support the District Court's sanctions award.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

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